

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN FLOOR SERVICES, INC. AND/OR ITS
ALTER EGO AMERICAN FLOORS, INC.

and

Case 13--CA--23498

CHICAGO DISTRICT COUNCIL OF CARPENTERS
AFFILIATED WITH UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 4 August 1983 and amended 22 September 1983, the General Counsel of the National Labor Relations Board issued a complaint 26 September 1983 against American Floor Services, Inc. and/or its alter ego American Floors, Inc., herein collectively called the Respondent, alleging that it violated Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On 27 December 1983 the General Counsel filed a Motion for Summary Judgment. On 29 December 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that a Board agent, acting on behalf of the Regional Director, by letter dated 2 December 1983, notified the Respondent that unless an answer was filed by 16 December 1983, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

American Floor Services and American Floors, both Washington corporations, are engaged in the construction, laying, and refinishing of floors at various jobsites within several States, including the State of Illinois. Each maintains its principal office and place of business in Bothell, Washington, where during calendar year 1982, a representative period, each purchased and received at its Bothell, Washington facility, goods and materials valued in excess of \$50,000, which were shipped directly from points outside the State of Washington, and performed services valued in excess of \$50,000 in States other than the State of Washington. During calendar year 1982, Respondent American Floors purchased and received at its Main Post Office jobsite in

Chicago, Illinois, goods and materials valued in excess of \$50,000 which were shipped directly from points outside the State of Illinois.

Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Alter Ego Relationship

On an unknown date, Respondent American Floor Services established American Floors as a subordinate instrument and disguised continuation of itself. American Floor Services and American Floors have been affiliated business enterprises with common officers, ownership, directors, management, and supervision. They have formulated and administered a common labor policy affecting terms and conditions of employment at the Main Post Office jobsite in Chicago and have shared common premises and facilities. They have provided services for and made sales to each other and have sold the same services and products to substantially the same customers. They have interchanged personnel and have held themselves out to the public as a single integrated business enterprise.

Based on these facts, we find that American Floors is an alter ego of American Floor Services, and that they constitute a single integrated business enterprise and single employer within the meaning of the Act.

B. The Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All carpenters but excluding office clerical employees, guards and supervisors as defined in the Act.

Since 17 August 1981 the Respondent has recognized the Union as the exclusive collective-bargaining representative of the employees in the unit.

Such recognition has been embodied in collective-bargaining agreements between the Respondent and the Union, the most recent of which was effective about 17 August 1981 and was in force when the Respondent commenced operations at the Main Post Office jobsite in Chicago in the beginning of April 1983.

C. The Refusals to Bargain

About 26 April 1983 the Union and the Respondent reached full and complete agreement with respect to terms and conditions of employment for the unit described in section 11,B. Since that time the Union has requested the Respondent to execute a written contract embodying that agreement. Since the beginning of May 1983 the Respondent, by its agent, Kent Spell, has failed and refused to do so. Accordingly, we find that the Respondent, by this conduct, has violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

Since about the beginning of April 1983, the Respondent has failed and refused to adhere to the terms of the above collective-bargaining agreement and has made unilateral changes in contractual terms and conditions of employment for unit employees at the Main Post Office jobsite, including but not limited to the method for determining wage rates and payments for the health and welfare fund and pension benefits. Accordingly, we find that the Respondent, by this conduct, has violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

Conclusions of Law

By refusing to execute a written contract embodying agreed-upon terms and conditions of employment, and by making unilateral changes in the contractual terms, including but not limited to the method of determining wage rates and payments for the health and welfare fund and pension benefits, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall, inter alia, order the Respondent to bargain on request with the Union, to execute a written contract embodying the terms and conditions of employment agreed upon about 26 April 1983, and to give effect to the provisions of the agreement retroactively from that date. We shall also order the Respondent to make whole unit employees for any loss of wages or other benefits caused by its failure to adhere to the terms of the contract, including making required payments for the health and welfare fund and making required pension benefit payments.¹ The Respondent shall also reimburse its employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). Backpay shall be made in a manner consistent with Board policy as stated in Ogle Protection Service, 183 NLRB 682 (1970), with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the addition of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. Depending on the circumstances of each case, these additional amounts may be determined by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, by evidence of any losses directly attributable to the unlawful withholding, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, American Floor Services, Inc. and/or its alter ego American Floors, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Chicago District Council of Carpenters affiliated with United Brotherhood of Carpenters and Joiners of America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to execute a written contract embodying the terms and conditions of employment agreed upon with the Union about 26 April 1983.

(c) Failing and refusing to adhere to the terms of its 26 April 1983 collective-bargaining agreement with the Union by unilaterally changing its terms and conditions of employment, including but not limited to the method for determining wage rates, and payments for the health and welfare fund and pension benefits.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All carpenters but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Execute a written contract embodying the terms and conditions of employment agreed upon with the Union about 26 April 1983, and give retroactive effect to its provisions.

(c) Adhere to the terms and conditions of the 26 April 1983, collective-bargaining agreement with the Union, including but not limited to its provisions governing the method for determining wage rates, and payments for health and welfare fund and pension benefits.

(d) Make whole the unit employees for any loss of wages or other benefits suffered as a result of the Respondent's failure to abide by the terms of its 26 April 1983 collective-bargaining agreement with the Union, in the manner set forth in the remedy section of this decision.

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Main Post Office jobsite in Chicago, Illinois, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

19 March 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Chicago District Council of Carpenters affiliated with United Brotherhood of Carpenters and Joiners of America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to execute a written contract embodying the terms and conditions of employment agreed upon with the Union about 26 April 1983.

WE WILL NOT fail and refuse to adhere to the terms of our 26 April 1983 collective-bargaining agreement with the Union by unilaterally changing its terms and conditions of employment, including but not limited to the method for determining wage rates and payments for the health and welfare fund and pension benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All carpenters but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL execute a written contract embodying the terms and conditions of employment agreed upon with the Union about 26 April 1983, and WE WILL give retroactive effect to its provisions.

WE WILL adhere to the terms and conditions of the 26 April 1983 collective-bargaining agreement with the Union, including but not limited to its provisions governing the method for determining wage rates and payments for the health and welfare fund and pension benefits.

WE WILL make whole the unit employees for any loss of wages or other benefits suffered as a result of our failure to abide by the terms of our 26 April 1983 collective-bargaining agreement.

AMERICAN FLOOR SERVICES, INC.
AND/OR ITS ALTER EGO AMERICAN
FLOORS, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604, Telephone 312--353--7597.